Collaborative Environmental and Transportation Agreement for Streamlining (CETAS)

RECORD OF AGREEMENT/CONSENSUS

For

Newberg-Dundee Transportation Improvement Project

This document is intended to serve as a record of and to provide details of an agreement reached between Oregon Department of Transportation (ODOT) and four non-concurring CETAS stakeholders during a meeting on November 6, 2003. The agreement allows for interagency concurrence on the Preferred Alternative (PA) for the Newberg-Dundee Transportation Improvement Project (Project) Location Draft Environmental Impact Statement (LDEIS). The agreement is contained in the numbered items listed in the section "Specific Elements of the Agreement."

Parties to the agreement will sign this document as a means of formalizing concurrence on the PA and to acknowledge that implementation of all aspects of the agreement will be necessary to maintain concurrence. As a record of the agreement, this document will also provide for a set of common expectations regarding future performance of the Project.

I. Background

In July 2003, five CETAS stakeholder agencies formally declined to concur with the PA identified by ODOT and the Federal Highway Administration in the LDIES for the Project. The agencies (collectively referred to as Agencies in this agreement) are the NOAA-Fisheries, U.S. Fish and Wildlife Service (FWS), Environmental Protection Agency (EPA), Oregon Department of Environmental Quality (DEQ), and Oregon Department of Fish and Wildlife (ODFW). Reasons for non-concurrence were detailed in formal letters provided by each of the agencies, and are summarized in "ODOT Response to Issues Raised in Non-concurrence Letters - CETAS Elevation Meeting - November 6, 2003", which is attached.

The general basis for non-concurrence was that the criteria developed to assess impacts did not fully or accurately measure performance with respect to environmental resources. The Agencies believed that the northern route alternative described in the LDEIS would be less disruptive to subject resources than the PA while still satisfying the purpose and need of the project.

ODOT indicated that various mitigation measures would be included in the final project

to address these concerns. The Agencies rejected this approach for two reasons: a) ODOT was unable to develop and implement a specific conservation plan prior to the design stage; and b) Clean Water Act section 404(b) guidelines require that avoidance and minimization, rather than mitigation, serve as the primary basis for determining the least environmentally damaging practicable alternative.

ODOT sought elevation regarding issues raised by the non-concurring Agencies because it disagreed with the Agencies basis for non-concurrence. ODOT's positions regarding these issues are as follows: 1) state of the art ODOT traffic modeling indicates that induced growth will be minimal; 2) nonconcurring Agencies participated in the development of the criteria and the protocols indicated that the northern route had greater habitat impacts than the southern route; and 3) proximity to the Willamette River was not agreed upon by CETAS as a criteria for evaluating water quality impacts.

On November 6, 2003, Level-2 of CETAS was convened for formal elevation. During this elevation meeting, ODOT and four of the non-concurring Agencies (NOAA Fisheries, ODFW, EPA, and FWS) agreed on an approach that would allow for concurrence with the PA. The approach called for the identification and implementation of measures to address avoiding and mitigating for potential impacts from the PA. It also called for balance between the Agencies' need for up-front specificity and commitment regarding such measures and the ODOT's inability to provide such specificity during the location phase of the Project. This balance would be achieved through a document in which ODOT commits to incorporation of these measures during the design phase of the Project. In the document, such measures would be described in a fairly broad and conceptual fashion, with specificity only as necessary to establish the expectations for measuring future consistency with the agreement. The elements of this approach and agreement are described in more detail below.

II. Specific Elements of Agreement

1. The ODOT and the Agencies recognize that there is disagreement on various aspects of methodology and interpretation of concurrence on evaluation criteria associated with selection of the PA.

2. ODOT will work with the agencies to identify and incorporate project measures and expectations necessary to avoid, minimize, and mitigate the direct and indirect effects associated with the PA as identified by the Agencies. These measures are identified in this agreement. Measurable expectations will be identified for each goal identified in this agreement and incorporated into the Project during the development of the design-level EIS. The costs of implementing these measures and expectations will be included in Project costs in the design-level DEIS and will be reflected in the funding

appropriated at the time of Project entry into the State Transportation Improvement Plan (STIP).

3. The Agencies concurrence for the PA in the location EIS is conditioned based on the premise that ODOT will implement the measures outlined in this Agreement. These measures are designed to provide selection for the agencies of the least environmentally damaging practical alternative for the Project. The Agencies reserve the right to rescind their concurrence with the PA during the development of the Project design level DEIS if the Agencies determine that these measures are not met. .

4. If the Agencies believe that subsequent planning and design for the Project are not consistent with the intent of the agreement, they may rescind the conditional concurrence provided through the agreement and request elevation. Elevation procedures are identified in the CETAS Charter Agreement. ODOT may seek elevation if it believes that one or more agencies are not upholding the agreement.

5. Withdrawal of concurrence as described above will be reviewed as consistent with the goals and intent of this Agreement.

III. Agreement Measures

The following measures will be used by ODOT and the agencies to develop the appropriate avoidance, minimization and mitigation opportunities, and by the Agencies to assess adequacy and consistency with the agreement and compliance with applicable State and Federal environmental regulations including: the Endangered Species Act, the 404(b)(1) Guidelines under the Clean Water Act, the National Historic Preservation Act, Oregon's Transportation Planning Rule, Section 4(f) of the Department of Transportation Act of 1968, FHWA Technical Advisory T6640: Guidance For Preparing And Processing Environmental And Section 4(F) Documents, ODFW Mitigation Policies, and the Fish and Wildlife Coordination Act. For the purposes of this agreement, mitigation is defined as "Compensating for the impact by replacing or providing substitute resources or environments".

A. Direct and indirect impacts to streams, riparian zones, floodplains, wildlife, wildlife habitat and wetland by the bypass and the associated interchanges and frontage roads, as described in the Design EIS, will be mitigated by protecting and enhancing major tributaries to the Willamette River and the Willamette River floodplain in the project area with the goal of long-term protection through such means as conservation easements and land donations to conservation groups or agencies with a resource protection mission.

1. ODOT will work with the agencies to identify, evaluate, and implement measures to minimize development in the floodplain to the extent possible. ODOT will seek opportunities to meet this measure through land purchase, leveraging enhancement opportunities with other conservation partners, and working with local jurisdictions to change zoning to protect floodplain functions.

2. ODOT will work with the agencies to identify, evaluate and implement measures to protect and enhance stream habitat values in the Willamette River and its tributaries within the project area.

Protection and enhancement of resources will focus on:

a. Hess, Chehalem, and Spring Brooks Creeks and their respective riparian areas, floodplains and wildlife values. Special attention should be directed at the stream related features that significantly influence stream processes and functions; and

b. Ash Island, at Willamette River Mile 51 to 52.

B. ODOT will incorporate other measures to avoid, minimize, and mitigate project impacts to streams, riparian zones, floodplains, wildlife, wildlife habitat and wetlands, including:

1. Minimizing the number of interchanges to be consistent with the Purpose and Need Statement of the Project. Interchanges and other project features will be strategically located to avoid sensitive or irreplaceable habitats to the extent possible.

2. Requiring that bridge crossings over streams fully span the width of their respective floodplains. ODOT will incorporate the Final Fluvial Performance Standards for bridge replacements as guidelines (for both bridge replacements and new bridges), ODFW/NOAA fish passage criteria for all culverts, and maintain wildlife passage in existing wildlife corridors.

C. ODOT will work with the agencies to identify and implement ways to maintain or improve water quality in the adjacent stretch of the Willamette River and its tributaries and to meet applicable water quality and quantity specifications.

1. ODOT will enhance water quality to the Willamette River through measures such as land purchase, leveraging enhancement opportunities with other conservation partners, and stormwater treatment for the bypass, new interchanges, and state roads currently without treatment.

2. All construction and post-construction stormwater treatments will be designed to meet pre-project water quality, quantity and seasonality, with a preference for upland stormwater treatment sites.

D. ODOT will work with the agencies to develop a viable stabilization strategy for the bank adjacent to Chehalem Creek that considers biological means of stabilization as its first priority and utilizes stream geomorphology analysis in the project design to minimize channelization of the stream, impacts to stream forming processes, and any other adverse alterations of stream geomorphology resulting from the project.

E. Mitigation for Project-related impacts will be commensurate with the area and severity of the impact. Mitigation for habitat impacts will be measured by the ecological value lost as a result of the Project impact.

1. Mitigation actions should be implemented in advance of or within the same year of the Project related construction activities. Mitigation actions may include but are not necessarily limited to:

a. Establishment of a mitigation bank within the Project area in an ecologically significant area such as Ash Island; and

b. Removal of existing fish and wildlife crossing blockages on Highway 99W by retrofitting them to allow successful fish and wildlife crossings.

IV. Signatures

The following parties have determined that this document is an accurate representation of agreements reached through CETAS on November 6, 2003, and that these agreements should underlie future implementation of the Newberg-Dundee Transportation Improvement Project: Signature is required from those names highlighted.

Tech Team Member	Agency	2nd Tier Signer
Elton Chang	FHWA	
Bob Cortright	ODLCD	
James Hamrick	SHPO	
John Marshall	USFWS	Joe Zisa
Dave McAllister	ODOT	Cathy Nelson
Mike McCabe	ODSL	
Tom Melville	ODEQ	Mark Charles
Randy Reeve	ODFW	Patty Snow
Susan Sturges	Corps	
Jim Turner	NOAA	Mike Tehan
Yvonne Vallette	EPA	Michelle Pirzadeah